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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 726

THE WACKENHUT CORPORATION, MARVIL INTERNATIONAL SECURITY SERVICES, INC., & ROBERT S. HOPLER,
Appellants,

v.

THE HON. SALVADOR RODRIGUEZ APONTE, Superintendent of Police, THE HON. RAFAEL HERNANDEZ COLON, Secretary of Justice, and THE HON. ROBERTO SANCHEZ VILELLA, Governor of the Commonwealth of Puerto Rico, *Appellees.*

On Appeal from the United States District Court for the District of Puerto Rico

JURISDICTIONAL STATEMENT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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On Appeal from the United States District Court for the District of Puerto Rico

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JURISDICTIONAL STATEMENT

OPINION BELOW

Appellants seek review of the as yet unreported Opinion and Order of the United States District Court for the District of Puerto Rico, filed June 23, 1966, set forth in the Appendix hereof, *infra*, pp. 11a-18a.

JURISDICTION

Appellants instituted this action in the District Court for the District of Puerto Rico under 28 U.S.C. §§ 2281, 2283 and 2284, seeking to have declared unconstitutional portions of Act No. 108 of June 29, 1965 of the Commonwealth of Puerto Rico and the issuance of an interlocutory and permanent injunction against the enforcement of that Act.

After trial, the three-judge court convened pursuant to 28 U.S.C. § 2284 filed the Opinion and Order appealed, staying proceedings in the action pending the commencement by appellants of a suit in the courts of the Commonwealth of Puerto Rico appropriate to raise the issue involved in this action and its prosecution to final determination by the Supreme Court of Puerto Rico, thus abstaining from deciding on the merits the matters before it. A notice of appeal to this Court was filed on July 20, 1966.

Both for themselves, as "agencies" under the law (Appendix, *infra*, pp. 1a-2a § 2), and their watchmen employees,[1] present and future, Appellants sought protection of their right to "hold specific employment and to follow a chosen profession free from unreasonable governmental interference." *Greene* v. *McElroy*, 360 U.S. 474, 479, (1959); *Pierce* v. *Society of Sisters*, 268

[1] Plaintiffs have standing to assert the latter. *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 64 (1963); *CBS* v. *U.S.* 316 U.S. 407, 422-23 (1942); *Liggett Co.* v. *Baldridge*, 278 U.S. 105, 110, (1928); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Terrace* v. *Thompson*, 263 U.S. 197 (1923); *Truax* v. *Corrigan*, 257 U.S. 312 (1921); *Truax* v. *Raich*, 239 U.S. 33 (1915); *See NAACP* v. *Alabama*, 377 U.S. 449, 458 (1964); *See Brotherhood of R. Trainmen* v. *Virginia*, 377 U.S. 1 (1964); *NAACP* v. *Button*, 371 U.S. 415, 428 (1963); *City of Chicago* v. *Atchison, T. & S. F. Ry Co.*, 357 U.S. 77, 83 (1958).

U.S. 510 (1925); *Lehon* v. *City of Atlanta*, 242 U.S. 43 (1916); *Smith* v. *Texas*, 233 U.S. 630 (1914); *Norwood* v. *Ward*, 46 F.2d 312 (S.D.N.Y. 1930) *aff'd.* 283 U.S. 800 (1931). Appellant Marvil International Security Services, Inc., also sought protection of its right to employ trained dogs in conjunction with guards against the absolute prohibition of that service contained in Article 19 of Law 108 (Appendix, p. 3a, *infra*). That these rights are substantial is implicit in the opinion of the District Court and in the very convocation of the three-judge tribunal and explicit in the cases just cited.

The jurisdiction of this Court to review the decision of the District Court on direct appeal is conferred by 28 U.S.C. § 1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case. *Government and Civic Employees, etc.* v. *Windsor*, 347 U.S. 901 (1954), affirming 116 F. Supp. 354 (N.D. Ala., 1953); cf. *England* v. *Louisiana State Bd. of Med. Exam.*, 375 U.S. 411, 413 (f.n.) (1964); *Turner* v. *City of Memphis*, 369 U.S. 350 (1962).

STATUTORY AND RULES PROVISIONS INVOLVED

The statute of the Commonwealth of Puerto Rico the constitutionality of which is involved is Act. No. 108 of June 29, 1965, 24 Laws of Puerto Rico Annotated ("L.P.R.A.") §§ 285-286d. The portions involved in this case are set forth in the Appendix, *infra*, pp. 1a-5a.

The pertinent regulations issued pursuant to the aforementioned statute are found at 27 Rules & Regulations of Puerto Rico ("R.R.P.R.") §§ 285o-1 to 285o-142, set forth in the Appendix, *infra*, pp. 5a-10a.

QUESTIONS PRESENTED

The District Court abstained from deciding plaintiffs' suit on the merits. Therefore, it entered an order staying all further proceedings in this case "pending the commencement by plaintiffs of litigation in the courts of the Commonwealth of Puerto Rico appropriate to raise the issues involved in this case and its prosecution to final determination by the Supreme Court of Puerto Rico." (Appendix, *infra*, p. 18a.)

The questions presented are:

A. Whether the District Court erred in abstaining *sua sponte* from the exercise of jurisdiction to decide if an interlocutory or permanent injunction should issue enjoining the defendants from enforcing the statute challenged herein on the grounds of its unconstitutionality in the following circumstances:

(i) Where on two separate occasions defendants expressly waived abstention by the District Court pending determination of the issues in the courts of the Commonwealth of Puerto Rico, and stipulated to trial and decision of the case by the federal court.

(ii) Where, after full trial on the merits pursuant to that stipulation, followed by the defendants second rejection of a stay, the doctrine of abstention was invoked by the District Court without affording appellants an opportunity to be heard with respect to the propriety of the court's invocation of the doctrine.

(iii) Where the court, after full hearing on the merits and of all the evidence, failed to make findings of fact.

(iv) Where all or part of the challenged portions of the statute are so clear on their face as not to require

construction or interpretation by the Commonwealth courts.

B. Whether the doctrine of abstention may be invoked after the trial stage of an action has been reached.

STATEMENT OF THE CASE

Appellants, The Wackenhut Corporation (Wackenhut) and Marvil International Security Services, Inc. (Marvil), are engaged in providing private enterprises and government agencies with guards and watchmen, as well as rendering investigative services. Appellant Marvil also offers teams of guards and trained German Shepherds. Appellant Hopler is Wackenhut's District Manager in Puerto Rico. The appellees are the Superintendent of Police, the Attorney General and the Governor of Puerto Rico, respectively. The Superintendent of Police is charged with enforcement of the law attacked below.

On September 10, 1965, appellants filed their application for Interlocutory and Permanent Injunction seeking to enjoin the governmental authorities from enforcing against them Act 108 of 1965 of the Commonwealth of Puerto Rico, on the grounds that it was unconstitutional under the 5th and 14th Amendments to the Constitution of the United States. Said Act, *inter alia*, prohibits security agencies from performing normal watchman and guarding services during labor disputes, prohibits watchmen employed by security agencies from performing any guard services unless qualified as detectives and prohibits security agencies from using trained dogs. The provisions of the Act are made generally inapplicable to guards and watchmen other than those employed by security agencies.

On September 10, 1965, the District Court (Mathes, J,) convoked a three-judge district court pursuant to the provisions of 28 U.S.C. Section 2284. On September 17, 1966, Judge Mathes issued a temporary restraining order prohibiting the enforcement of Act 108 against appellants Wackenhut and Hopler. On October 19, 1965, appellees filed a motion seeking, *inter alia*, a stay of proceedings and to have the constitutional controversy first resolved by the courts of the Commonwealth of Puerto Rico. On November 19, 1965, appellees filed a motion withdrawing the motion of October 19, and on December 1, 1965, joined in a stipulation agreeing to proceed to trial before the federal court (Appendix, *infra*, p. 19a.)

The case proceeded to trial on February 8 and 11, 1966, before the statutory court of three judges and was continued until April 27, 1966, in order to ascertain the effects of the regulations (Appendix, *infra*, pp. 5a-10a), then being promulgated by the Superintendent of Police. At the April 27 hearing, the court offered appellees the opportunity of proceeding in the Commonwealth courts for constitutional and statutory interpretation of the law challenged. Once again appellees elected to remain in federal court.

On June 23, 1966, the District Court abstained from deciding the constitutionality of Act 108 of 1965, retained jurisdiction, and required appellants to raise the issues before the appropriate courts of the Commonwealth of Puerto Rico within a reasonable time under pain of dismissal.

THE QUESTIONS ARE SUBSTANTIAL

The decision of the District Court raises substantial questions respecting the propriety of invoking the so-called doctrine of abstention, and the balancing of the rights of federal litigants against the counterweights of federal-state comity. *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 328-29 (1964); *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77, 83 (1958).

The abstention doctrine is a judicially imposed self-restraint, founded upon equitable principles, and confined to a relatively small class of cases. *Hostetter, supra; Baggett* v. *Bullitt*, 377 U.S. 360, 375 (1964); *Meredith* v. *City of Winter Haven*, 320 U.S. 228 (1943). It should not be invoked automatically, but only in the exercise of a sound discretion since the federal courts cannot evade the grant of judicial power conferred by Article 3, §§ 1 and 2 of the Constitution. *N.A.A.C.P.* v. *Bennett*, 360 U.S. 471 (1959); *Meredith* v. *City of Winter Haven, supra; cf. Fifth Amendment.* Abstention should not be invoked where the statute is clear and unambiguous, *Harman* v. *Forsenius*, 380 U.S. 528 (1965), *Davis* v. *Mann*, 377 U.S. 678, 690 (1964), or, being vague in other respects, is unambiguous in application to complainant, and especially where neither party requested abstention below. *Baggett* v. *Bullitt*, 377 U.S. at 375-380; *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U.S. at 328-29. That the appellants are "agencies" within the meaning of the law is clear. (Appendix, *infra*, pp. 1a-2a, § 2).

While recognizing that this Court is loath to upset a denial of an injunction, and presumably an abstention, absent a clear showing of abuse of discretion, we suggest that the abstention in the instant case is such

an abuse, approximating of itself a denial of due process, namely, expeditious exercise of the judicial power granted and imposed upon this Court and "such inferior courts as Congress may from time to time ordain and establish". Article 3, § 1, U.S. Constitution. In this connection, the appellants invite this Court's attention, in particular, to the following circumstances:

(1) The constitutional rights which appellants are seeking to protect are rights which the Court has repeatedly held to be fundamental, as shown above pp. 2-3.

(2) The provisions of the statute enforcement of which is sought to be enjoined are virtually the same as the provisions of the statute of the State of New York, the constitutionality of which was mooted by the construction given in *Norwood* v. *Ward, supra,* p. 3, and similar in operative effect to the statutes of Illinois and Texas held by this court to be unconstitutional in *Morey* v. *Doud,* 354 U.S. 457 (1957) and *Smith* v. *Texas, supra,* p. 3, respectively.

(3) The factual situation is closely parallel to, but even stronger than the circumstances held to be proper cases for non-abstention in *City of Chicago* v. *Atchison, T. & S. F. Ry. Co.,* 357 U.S. at 84, and the *Hostetter* case U.S. at 328-329.

(4) The showing made in the court below establishes the application of the statute questioned to appellants, its enforcement, and the likelihood of substantial injury to appellants for which there is no plain, adequate and complete remedy at law. *Toomer* v. *Witsell,* 334 U.S. 385 (1948).

(5) The appellees' withdrawal of their motion for abstention and their stipulation to go to trial before the

District Court certainly satisfied the dictates of comity. The court's invocation the abstention doctrine after the trial, not even giving the parties the benefit of findings of fact and the consequent effect of *res judicata*, and remitting them to another trial, with the attendant prospects of exhaustion of appeals in the judicial hierarchies of both Puerto Rico and the United States, manifests a clear and unmistakable abuse of discretion which this Court should promptly correct.

We think it equally plain that this case presents a question of substantial importance affecting the administration of justice in federal courts in their time-honored role as arbiters of the constitutional rights of litigants.

CONCLUSION

For the reasons stated, the question presented by this appeal are substantial and of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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